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10/743,655	12/22/2003	Robert May	1665/SYMBP182US	7594
23623 7590 08/20/2007 AMIN, TUROCY & CALVIN, LLP 1900 EAST 9TH STREET, NATIONAL CITY CENTER 24TH FLOOR, CLEVELAND, OH 44114			EXAMINER ELISCA, PIERRE E	
			ART UNIT 3621	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/743,655
Filing Date: December 22, 2003
Appellant(s): MAY ET AL.

Himanshu S. Amin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/29/2007 appealing from the Office action mailed 0/05/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US Pg Pub 2004/0049401 A1 Carr et al 03/2004

US Pg Pub 2003/0178487 A1 Rogers 09/2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The rejection to claims 1-34 under 35 U.S.C. 102 e) as being anticipated by Carr et al US 2004/0049401A1 and to claims 1-34 under 35 102 (e) as being anticipated by Rogers US 2003/0178487 A1 as set forth in the office action mailed on 04/17/2006 is maintained.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-34 are rejected under 35 U.S.C. 102 (e) as being anticipated by Carr et al US 2004/0049401A1.

As per claims 1-5 and 7-34 Carr discloses a method of age verification in connection with retail sales, the method comprising of:

A machine data reader (or machine-readable), the machine data reader associated with a verification component that determines age-related data information at least on part upon encoded data on an identification card read (or data encoded on a driver's

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license) by the machine data reader, and a component that relays the age-related information to a point-of-sale system in a format that is compatible with the point-of-sale system. Applicant's newly added limitation wherein said the machine data reader containing a verification component that decodes the encoded data, extracts the age-related data information, and generates a data string compatible with a point-of-sale is also disclosed by Carr specifically page 3, [0059] (see., abstract, page 2, [0045], page 3, [0059], page 5, [0085], page 8).

As per claim 6 Carr discloses the claimed limitation wherein the point-of-sale system comprising a display unit that displays the age-related data (see., page 5, [0085]).

Please note that it is inherent to realize that the machine readable data on the card also includes the age-related data.

Claims 1-34 are rejected under 35 U.S.C. 102 (e) as being anticipated by Rogers US 2003/0178487 A1.

As per claims 1-34 Rogers discloses a Detsky age verification information system, the system comprising:

A machine data reader, the machine data reader associated with a verification component that determines age-related data information at least on part upon encoded data on an identification card read the machine data reader, and a component that relays the age-related information to a point-of-sale system in a format that is compatible with the point-of-sale system. Applicant's newly added limitation wherein

said the machine data reader containing a verification component that decodes the encoded data, extracts the age-related data information, and generates a data string compatible with a point-of-sale is also disclosed by Carr, specifically page 3, [0059] (see., abstract, figs 1, 15A-22, pages 1-8).

(10) Response to Argument

In response to Applicant's arguments, Applicant argues that the prior art of record (Carr and Rogers) fail to disclose the recited feature:

- a. "The machine data reader containing a verification component that decodes the encoded data, extracts the age-related data information, and generates a data string compatible with a point-of-sale system based at least in part on the age-related data".

The Examiner concludes that when the prior art describes all the claimed structural and functional relationships between the descriptive material and the substrate, but the prior art describes a different descriptive material than the claim, then the descriptive material is non-functional and will not be given any patentable weight.

That is, the Examiner concludes that such a scenario presents no new and unobvious functional relationship between the descriptive material and the substrate. See *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d, 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004).

Furthermore, the prior art of record (Carr) discloses the limitation detailed above in page 3, [0059].

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b. "generating a string that is received by a point-of-sale system, the string identifying at least one of an age and range of ages..". However, the Examiner respectfully disagrees with Applicant's characterization of the prior art. Carr discloses this limitation in page 3, [0059], specifically wherein said the customer can show the card to a web cam associated with a point-of-sale terminal, the customer also presents a driver's license to demonstrate age. The web cam captures optically-encoded data, and the terminal decodes same.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Pierre Eddy Elisca

Primary Examiner

Conferees:

Andrew Fischer

F. B. for

SPE, Art Unit 3621

Abdi Kambiz



SPE, Art Unit 3692
